

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION

IN RE:)	
)	
MARY FRANCES HARGETT,)	Case No. 19-51280
)	
Debtor.)	Chapter 13
_____)	

**MOTION TO EMPLOY PROFESSIONAL AND
APPROVE CONTINGENCY AND HOURLY FEE AGREEMENT**

NOW COMES Mary Frances Hargett (the “Debtor”), by and through undersigned counsel, and respectfully moves the Court for an order approving the Debtor’s and counsel’s mutual contingency and hourly fee agreement for purposes of pursuing causes of action against Citibank, NA, Caliber Home Loans, Fay Servicing, LLC, US Bank National Trust Association, and/or SN Servicing Corporation. In support thereof, the Debtor shows the Court as follows:

1. The Debtor filed a voluntary Chapter 13 bankruptcy on December 9, 2019.
2. It is the Debtor’s wish that she be allowed to employ Kristen S. Nardone and Nardone Law Firm, PLLC in the supplemental capacity to bring an Adversary Proceeding against Citibank, NA, Caliber Home Loans, Fay Servicing, LLC, US Bank National Trust Association, and/or SN Servicing Corporation (the “Potential Defendants”) for violations of state and federal laws, including, among others, the Bankruptcy Code, the North Carolina Debt Collection Act, the Truth in Lending Act and the Real Estate Settlement Procedures Act.
3. Towards that end, the Debtor has agreed to retain Kristen S. Nardone and Nardone Law, PLLC on a contingency basis, a copy of which is attached to this Motion as “Exhibit A.”
4. Pursuant to the April 2008 Standing Order, “[r]epresentation of the debtor in adversary proceeding also constitutes a non-base service.”
5. Pursuant to 11 U.S.C. § 330 (a)(4)(B), in this Chapter 13 case, “the court may allow reasonable compensation to the debtor’s attorney for representing the interest of the debtor in connection with the bankruptcy case based on a consideration of the benefit and necessity of such services to the debtor and the other factors set forth in this section.”
6. Pursuant to *In re: Abrams & Abrams, P.A.*, 605 F.3d 238 (4th Cir. (NC) May 18, 2010), contingency fees may be reasonable.

7. Starting from the factors (often called the lodestar factors) set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and adopted in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (4th Cir. 1978) and *Allen v. U.S.*, 606 F.2d 432 (4th Cir. 1979), *Abrams* held that “accepting reasonable contingency agreements ... increase the likelihood that a claimant can find an attorney sufficiently committed and skilled to litigate successfully.” *Abrams* at 246, citing *West v. Sullivan*, 907 F.2d 367, 372 (2nd Cir. 1990).
8. *Abrams* also found that reasonable contingency fees met lodestar factors as it would “transfer a significant portion of the risk of loss to the attorneys taking a case.” *Abrams* at 246.
9. Further, since a contingency fee is by its nature mathematically tied to the amount of a settlement, it meets another lodestar factor, namely that it be commensurate with the “award involved and the results obtained.” *Allen* at 436 n. 1.
10. Approval of a contingency fee agreement in advance is appropriate, since “successful outcomes often make risks seem less risky in hindsight than they were at the time, and a court should not [ignore] those risks merely because at some later point in litigation the defendant found it in its interest to settle,” *Abrams* at 248.
11. The contingency fee is reasonable under the facts of this case as:
 - a. The Debtor has little or no assets;
 - b. The attorney is completely assuming the risk not only of non-payment of time, but of any advanced expenses; and
 - c. The fee will only be paid if the Adversary Proceeding is successful.

WHEREFORE, the Debtor respectfully prays the Court:

1. Authorizing the employment of Kristen S. Nardone with Nardone Law, PLLC as attorney to represent the Debtor in the aforesaid matter;
2. Approving, pursuant to 11 U.S.C. § 330 (a)(4)(B), the contingency fee agreement; and
3. For such further relief that the Court deems just and necessary.

This the 2nd day of November, 2021.

/s/ Kristen S. Nardone
Kristen S. Nardone
Attorney for Debtor
NC Bar No. 28063

OF COUNSEL:

Nardone Law, PLLC
PO Box 1394
Concord, NC 28026-1394
(704) 784-9440

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the MOTION TO EMPLOY PROFESSIONAL was served by electronic means and/or first class mail, postage prepaid, to the parties indicated below at their respective addresses and to the Chapter 13 Trustee at the address indicated below:

Kathryn L. Bringle
Chapter 13 Trustee

William P. Miller
Bankruptcy Administrator

Mary Hargett
3735 Stallings Rd.
Harrisburg, NC 28075

Fay Servicing, LLC
Attn: Officer or Managing Agent
8001 Woodland Center Blvd Suite 100
Tampa, FL 33614

Citibank, NA
Fay Servicing, LLC
PO Box 814609
Dallas, TX 75381

Citibank, NA
c/o Darrelyn Thomas
10700 Abbott's Bridge Road, Suite 170
Duluth, GA 30097

Citibank, NA
Attn: Officer or Managing Agent

388 Greenwich St
New York, NY 10013

US Bank, NA
c/o SN Servicing Corporation
323 Fifth Street
Eureka, CA 65501

US Bank, NA
Attn: Officer or Managing Agent
800 Nicollet Mall
Minneapolis, MN 55402

SN Servicing Corporation
Attn: Officer or Managing Agent
13702 Coursey Blvd, Bldg 1A
Baton Rouge, LA 70817-1370

Caliber Home Loans
Attn: Officer or Managing Agent
1525 S. Belt Line Road
Coppell, TX 75019

This the 2nd day of November, 2021.

/s/ Kristen S. Nardone
Kristen S. Nardone
Attorney for Debtor
NC Bar No. 28063

CONSUMER LAW RETAINER AND FEE AGREEMENT

Client(s): Mary Frances Hargett

Agreement: The Nardone Law Firm ("We", "Our" and "Us") agree to represent Client(s) ("You" and "Your") in your consumer law matter and its related claims and mortgage servicing matter. You have not hired us to defend any state court action filed or served upon you, nor will we pursue any appeal on your case. We will handle your matter, explain your rights, keep you updated, and advise you of your legal options. We cannot and do not guarantee particular results. You authorize us to make an initial demand on your case and associate with anyone we deem necessary to litigate your claims. You agree to keep us informed about your current address, telephone numbers and other contact information at all times during our representation of you. If you move, you will tell us immediately to where you have moved and how our firm can reach you. You authorize us to use and disclose any recorded tapes or material you provide to us to pursue your case, to educate others about collection matters, or to use for broadcast with radio, television, or internet media, but we will not do so if you instruct us in writing not to when you provide us the materials. You have been advised and understand that any time you or we use electronic communications, such as cellular phones, fax, or email to communicate about your case there is always a risk of inadvertent or deliberate interception of these communications by others. You agree that you will contact us if you have questions about your legal matter and our office will endeavor to promptly respond to you.

Legal Fees: You may be entitled to several different types of damages in connection with this matter, including actual damages, statutory damages and punitive damages. In some circumstances, you may also be entitled to have the other side pay all or a portion of your legal fees and costs if your case is successful. Our fee for handling this case for you will be 40% of the amount of the total recovery or the amount that the Court orders or the other side agrees to pay us in attorney's fees, whichever is higher. In the event the Court orders the other side to pay, or the other side agrees to pay, our attorneys fees, but the amount to be paid by the other side is less than 40% of the total recovery, our fee will still be 40% of the amount of the total recovery, but the amount the other side pays will be credited against the amount of Our fee, and only the difference will be paid from the total recovery.

Cash payments, debt relief or any other tangible economic benefit will be added to and included in calculating your total recovery in your case. Our current hourly rates are \$350.00 for attorney Kristen Nardone, and \$100.00 for paralegals. You will pay us no legal fees or costs if there is no recovery in your matter. You hereby unequivocally and irrevocably assign to us all right, title, and interest of any kind in attorney's fees recovered or awarded in this case whether negotiated between the parties or ordered by the court.

EXHIBIT A

Costs: There will be legal costs involved in handling your case, including but not limited to postage, filing fees, long distance, legal research, law clerks, copies, court reporters, and process servers. Costs will be subtracted from any recovery in your case after calculating the attorney's fees. This law firm will finance your legal costs unless otherwise agreed to in writing between you and us. You agree to pay us back for these legal costs out of any recovery we get for you, including paying us back for any interest or late charges that we incurred in financing your case. **You will pay us nothing for your costs incurred if there is no recovery in your matter.** However, you agree to pay reasonable copying and retrieval costs for your legal file if you request it after your case is over. You hereby unequivocally and irrevocably assign to us all right, title, and interest of any kind in cost amounts recovered or awarded in this case whether negotiated between the parties or ordered by the court.

Payment: Any recovery in your case, either by a settlement or a judgment, will be paid with a disbursement statement as follows: first, our attorney's fees will be paid to us; second, we will be reimbursed for all of your costs paid or payable in the case; and, third, any remaining funds will be paid to you.

Termination: We may withdraw in writing at any time as your lawyer, so long as you are not prejudiced by it. You may terminate us at any time as your lawyer, but we retain an attorney's lien for the work we have done in your case.

By signing below, you agree to the terms of this Agreement and acknowledge that you have received a copy of it.

Client(s) Mary S. Hays

By [Signature]
Nardone Law Firm, PLLC

9/11/20
Date

AFFIDAVIT OF EXPERIENCE OF KRISTEN S. NARDONE

1. Ms. Nardone is an attorney with the Concord, North Carolina Law Office of Davis Nardone, PC, having received a Bachelor of Arts Degree in Sociology from the University of North Carolina at Greensboro in May 1998 and a Juris Doctor Degree from Wake Forest University School of Law in May 2001.

2. Upon graduation from law school, Ms. Nardone became a member of the North Carolina State Bar.

3. Ms. Nardone was admitted to the United States District Court for the Middle District of North Carolina in August 2002.

4. Ms. Nardone served as a judicial law clerk for the Honorable W. Craig Whitley in the Western District of North Carolina from 2001-2002 and the Honorable Thomas W. Waldrep, Jr. from 2004-2006 in the Middle District of North Carolina. She has practiced law with various law firms since 2002.

5. Ms. Nardone is certified by the North Carolina State Bar Board of Legal Specialization as a certified specialist in consumer bankruptcy law.